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12 DAN C.

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 DAN C.,

16 Case No. 2:22-cv-03647-FLA-AJR

17 Plaintiff,

18 v.

19 ANTHEM BLUE CROSS LIFE AND
20 HEALTH INSURANCE COMPANY;
21 DIRECTORS GUILD OF AMERICA –
22 PRODUCER HEALTH PLAN; AND DOES 1
23 THROUGH 10,

24 Defendant.

25 DECLARATION OF JOSEPH A. CREITZ
26 IN SUPPORT OF PLAINTIFF'S MOTION
27 FOR AWARD OF ATTORNEY'S FEES

DECLARATION OF JOSEPH CREITZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS

I, Joseph A. Creitz, do hereby declare as follows:

1. I am an attorney licensed and admitted to practice before all state and federal courts in California, the Seventh Circuit United States Court of Appeals, and the United States Supreme Court. I am currently the managing partner of Creitz & Serebin LLP, and Professor of Practice at the University of California College of the Law, San Francisco (nee Hastings). I have personal knowledge of the matters stated herein, and I can and will testify competently thereto if called upon to do so.

EXPERIENCE AND QUALIFICATIONS OF JOSEPH A. CREITZ

2. I graduated from the University of California College of the Law, San Francisco (“UC Law SF”) in 1992, and waited until 1993 to take the California Bar Exam. From 1992 to 1995, I worked for a small litigation boutique handling pre-trial litigation and appeals in both state and federal courts. From 1995 through 1999 I worked at Van Bourg, Weinberg, Roger & Rosenfeld, rising to the position of senior-most associate, representing labor unions and Taft-Hartley benefit plans predominantly in federal fiduciary litigation involving the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). From my work during that period, published ERISA decisions in which I was counsel included the following: *McMorgan & Co. v. First California Mortg. Co.*, 916 F. Supp. 966 (N.D. Cal. 1995) (defeating a mortgage servicer’s Rule 12(b)(6) motion regarding its ERISA fiduciary status); *McMorgan & Co. v. First California Mortg. Co.*, 931 F. Supp. 699 (N.D. Cal. 1996) (defeating a defendant’s motion to compel privileged documents); *California Ironworkers Field Pension Trust, et al. v. Loomis, Sayles & Co.*, 1999 WL 1457226 (C.D. Cal. 1999) (as trial co-counsel for Plaintiff health and welfare fund, obtained judgment of fiduciary liability under ERISA against investment manager that invested health and welfare trust fund assets in risky inverse floater mortgage derivatives); *Cline v. TIMEC*, 200 F.3d 1223 (9th Cir. 2000) (as appellate counsel for Plaintiff/Respondent, defeated defendant’s appeal for attorneys’ fees in complex ERISA suit); *Laborers v. Delbon*, 199 F.3d 1109 (9th Cir. 2000) (as appellate counsel for Plaintiff/Respondent, defeated defendant’s appeal for attorneys’ fees in complex ERISA suit);

DECLARATION OF JOSEPH A. CREITZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR AWARD OF ATTORNEY'S FEES

California Ironworkers Field Pension Trust, et al. v. Loomis, Sayles & Co., 259 F.3d 1036 (9th Cir. 2001) (as appellate co-counsel for Plaintiff/Cross-Appellant/Cross-Respondent, defeated Defendant's appeal of trial court finding of fiduciary liability under ERISA and established the "anti-netting rule" in the Ninth Circuit).

3. From 1999 to 2003, I served as general counsel to the web design firm 415, Inc., in which capacity I was also a named ERISA fiduciary of the company's 401(k) plan. And in 2003, I completed an LL.M. in Taxation cum laude from Golden Gate University, with a focus on the tax aspects of ERISA.

4. From 2003 to 2005, I worked as a Trial Attorney for the United States Department of Labor, in the San Francisco Regional Office of the Solicitor of Labor, predominantly litigating ERISA disputes on behalf of the United States Secretary of Labor. There, in addition to training other DOL attorneys and investigators on ERISA and litigation-related issues, I initiated and resolved numerous ERISA claims against plan sponsors and plan fiduciaries, and successfully took one ERISA matter to trial in Central District of California: *Chao v. Dearman, et al.*, unpublished (C.D. Cal 2004) (Chief Judge Stephen Wilson, presiding), aff'd 187 Fed. App'x 685 (9th Cir. 2006) (as trial counsel for the Secretary of Labor, prevailed in United States District Court against ESOP fiduciaries on complex fiduciary claims involving mis-valuation of a business and its contingent tax liabilities).

5. From 2005 through January 2013, I maintained a solo law practice, focusing on ERISA matters, representing primarily participants and beneficiaries in benefits disputes and breach of fiduciary duty litigation. In that time, I handled hundreds of ERISA benefit denial claims involving pensions, death benefits, health and welfare benefits generally, health insurance, and both short-term and long-term disability benefits; as well as numerous claims for breaches of fiduciary duties under ERISA. Among them, in 2005 and 2006, I handled a particularly complex dispute between a participant and the fiduciary of a small ERISA-regulated retirement plan the assets of which had been entirely invested in collectible postage stamps. My efforts in that matter resulted in full recovery for my client without the necessity of litigation.

DECLARATION OF JOSEPH A. CREITZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR AWARD OF ATTORNEY'S FEES

1 6. In 2013 I formed the partnership Creitz & Serebin LLP with respected ERISA
2 litigator Lisa Serebin, and we have been litigating ERISA benefits and breach of fiduciary duty
3 lawsuits, both individual matters and class actions, continuously since then. Before partnering with
4 me, Lisa Serebin had been a partner and/or of-counsel at multiple firms with elite ERISA practices,
5 including Trucker Huss, Morgan Lewis, and Perkins Coie. She has been an ERISA litigator since
6 graduating with her J.D. from the University of Wisconsin in 1989 – thus she has approximately six
7 more years of ERISA litigation experience than I do. Nonetheless, we both charge the same hourly
8 rate, discussed below, of \$925/hour.

9 7. Fifteen years ago, in 2008, I obtained an award of attorney's fees from District Judge
10 Pregerson in the Central District of California at the rate of \$475/hour. *Cyr v. Reliance Standard Life*
11 *Ins. Co.*, No. CV-06-01585-DDP-RCX, 2008 WL 7095148 (C.D. Cal. January 16, 2008), aff'd 642
12 F.3d 1202 (9th Cir. 2011) (en banc), and 448 Fed. App'x 749 (9th Cir. 2011). The published Ninth
13 Circuit en banc decision in *Cyr* was a landmark case in Ninth Circuit ERISA jurisprudence. There,
14 the Ninth Circuit, hearing the matter en banc in the first instance (an extraordinarily rare procedural
15 step that we had petitioned the court to take) unanimously and explicitly reversed twenty-six years
16 of its own decisions and established new law on the question of who can be a proper party
17 defendant in an ERISA suit for benefits. 642 F.3d at 1207. I was the principal advocate and brief
18 writer on that issue, and for our work on the case, my co-counsel Joseph Garofolo and I were
19 honored in 2012 with the California Lawyer Magazine's California Lawyer Attorneys of the Year
20 ("CLAY") Award.

21 8. I have been listed in the Super Lawyers publication in the category of "Employee
22 Benefits" every year since 2013, and I served on the Super Lawyers Blue Ribbon Panel for 2016,
23 2018, 2020, and 2023. In 2019 I was recognized as one of the Top 100 Northern California Super
24 Lawyers. From 2017 to the present I have been listed in the Best Lawyers in America. In 2020 and
25 2024, that publication also named Lawyer of the Year in the category of ERISA Litigation.
26 Additionally, Creitz & Serebin is one of only three Bay Area law firms – and the only plaintiffs' firm
27 – rated as Tier One by Best Lawyers for ERISA litigation. The other two firms are Trucker Huss
28 and Seyfarth Shaw.

DECLARATION OF JOSEPH A. CREITZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR AWARD OF ATTORNEY'S FEES
Dan C. v. Anthem, Case No. 2:22-cv-03647-FLA-AJR

1 9. Additionally, I have also been a contributing editor and author to two chapters in
2 the treatise *Employee Benefits Law*, published by BNA in conjunction with the American Bar
3 Association (“ABA”); and I continue to serve as a co-chair of the Civil Procedure chapter of the
4 Employee Benefits subcommittee of the Labor and Employment section of the ABA.

5 10. In 1994 I began teaching at my lama mater UC Law SF, and from 1997 to the 2023,
6 I held the title of Adjunct Professor. I have taught ERISA and employee benefits issues in my
7 classes since 2007, and I received the 2012-2013 Esteemed Professor Award, and the 2016 and 2018
8 Best Teacher Awards. In 2023 the school gave me the title of Professor of Practice and appointed
9 me to be the Director of its Legal Research & Writing and Moot Court programs.

10 REASONABLE HOURLY RATES OF CALIFORNIA ERISA ATTORNEYS

11 11. I am generally familiar with the rates charged by employee benefits attorneys around
12 the country. I try to review all published, and most unpublished, fee awards in ERISA cases.
13 Multiple courts have credited my declarations regarding the reasonable hourly rates of other ERISA
14 plaintiffs’ attorneys. For example, Daniel Feinberg was awarded \$975 per hour and Joseph Barton
15 was awarded \$900 per hour from the Northern District of California. *See Foster v. Adams & Assocs., Inc.*, No. 18-cv-02723-JSC, 2022 WL 425559, at *9 (N.D. Cal. Feb. 11, 2022).

16 12. In previous years, multiple courts approved my older hourly rate of \$800/hour. On
17 August 29, 2019, District Judge Edward Chen entered judgment in favor of my client in an
18 individual ERISA health benefits case, and awarded my fees at the rate of \$800/hour. *See Final*
19 *Judgment, Dkt. Entry 47, Devers v. Carpenters Fund for California*, No. 3:18-cv-04215-EMC (N.D. Cal
20 Aug. 29, 2019). Although the judgment there does not discuss my hourly rate, which the defendant
21 did not contest, the fees requested and awarded were based on my rate of \$800/hour. Subsequently,
22 in 2020, Judge Chen issued a fee award following the successful litigation of another individual
23 ERISA health benefits case. That award also does not discuss my hourly rate, and the defendants
24 once again did not contest it, but the rate requested in the fee petition in that case was also \$800 per
25 hour. *See Bain v. Oxford*, No. 15-cv-03305-EMC, 2020 WL 1332080 (N.D. Cal. March 23, 2020). On
26 May 21, 2021, District Judge Josephine Staton approved my fee request as part of her final approval
27 order in settled ERISA class action litigation. *Hurtado v. Rainbow*, No. 8:17-cv-01605-JLS-DFM,

DECLARATION OF JOSEPH A. CREITZ IN SUPPORT OF
PLAINTIFF’S MOTION FOR AWARD OF ATTORNEY’S FEES

Dan C. v. Anthem, Case No. 2:22-cv-03647-FLA-AJR

1 2021 WL 2327858 (C.D. Cal. May 21, 2021). As part of that order, Judge Staton approved my
2 requested rate of \$800/hour. *Id.* at *6. Judge Staton approved my co-counsel Joseph Barton's
3 requested rate in the Hurtado matter at \$950/hour. *Id.* My co-counsel there, Joseph Barton, has
4 approximately nine fewer years of experience as an ERISA litigator than I do. The current billing
5 rate in effect for both Lisa Serebin and myself is \$925/hour, and the firm currently has numerous
6 clients who have retained us on an hourly basis at that rate.

7 SKILL, EXPERIENCE, REPUTATION, AND HOURLY RATES

8 OF DAVID LILIENSTEIN AND KATIE SPIELMAN

9 13. I am personally familiar with the work, skills, expertise, and experience of DL Law
10 Group, and its attorneys David Lilienstein and Katie Spielman I have known them both for over a
11 decade. In that time, we have consulted one another about issues in pending cases, and referred
12 cases to one another. In one case, I served as a court-appointed mediator in a residential care
13 benefits case that DL Law Group was prosecuting. I have seen the firm's work first-hand, and it is
14 consistently of very high quality. The firm has a reputation among attorneys in the ERISA plaintiffs
15 bar for handling challenging cases and delivering excellent results for its clients.

16 14. As discussed above, I am personally aware of the rates charged by (and awarded to)
17 ERISA plaintiffs' attorneys around the country, and especially in the Northern District of
18 California. I can say without reservation that David Lilienstein's requested billable hourly rate of
19 \$850, and Katie Spielman's requested billable hour rate of \$750, are equivalent to or less than the
20 rates charged by and paid to ERISA plaintiffs' attorneys of comparable education, skill, expertise,
21 and experience.

22 I declare under penalty of perjury that the foregoing is true and correct. Executed this first
23 day of May 1, 2024 at San Francisco, California.

24 /s/ Joseph A. Creitz
25 JOSEPH A. CREITZ

26 **SIGNATURE ATTESTATION**

27 28 The filer hereby attests that the signatory of this filing authorized the execution of his
electronic signature and consented to the electronic filing of this document.

DECLARATION OF JOSEPH A. CREITZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR AWARD OF ATTORNEY'S FEES

Dan C. v. Anthem, Case No. 2:22-cv-03647-FLA-AJR